

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JUDGE DAVID M. GLOVER

DIVISION I

CA08-1372

April 22, 2009

SCOTT JONES

APPELLANT

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION [F104631]

V.

SHERWOOD PONTIAC, BUICK,  
GMC, INC., AND RISK  
MANAGEMENT RESOURCES

APPELLEES

AFFIRMED

In this workers' compensation case, the ALJ determined that appellant, Scott Jones, suffered an annular bulge at L5-S1 as a result of a compensable injury on April 13, 2001, and that the injury had progressively worsened into an annular tear at L5-S1, which was a compensable consequence of the 2001 injury. The Commission reversed the ALJ's decision, finding that Jones had failed to meet his burden of proving that the annular tear was related to the compensable 2001 injury. We affirm.

In *Neal v. Sparks Regional Medical Center*, 104 Ark. App. 97, 101-02, \_\_\_ S.W.3d \_\_\_, \_\_\_ (2008), this court stated:

When reviewing a decision of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial

evidence. *Finley v. Farm Cat, Inc.*, 103 Ark. App. 292, \_\_\_\_ S.W.3d \_\_\_\_ (2008). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm. *Id.* Where the Commission denies benefits because the claimant has failed to meet his burden of proof, the substantial-evidence standard of review requires us to affirm if the Commission's decision displays a substantial basis for the denial of relief. *Parson v. Arkansas Methodist Hosp.*, 103 Ark. App. 178, \_\_\_\_ S.W.3d \_\_\_\_ (Sept. 24, 2008). A substantial basis exists if fair-minded persons could reach the same conclusion when considering the same facts. *Id.*

In this case, Jones testified that he injured his back on April 13, 2001, while working on a vehicle for appellee Sherwood Pontiac, Buick, GMC. According to Jones, he hurt his back at work about a month earlier; he did not make a claim; but instead he just saw his own physician, who ordered an MRI on March 22, 2001. The March 2001 MRI showed that there were minimal disc bulges at L1-2 and L4-5. Jones said that after the April 13, 2001 incident, he had pain in his back and both legs, but mainly in his lower back. He was sent to Dr. Earl Peeples, who gave him an injection and a TENS unit to wear. Jones testified that Dr. Peeples did not prescribe any other treatment for him, and when he continued to complain of pain, Dr. Peeples referred him for an MMPI psychological exam. It was normal. Jones testified that Dr. Peeples told him on July 27, 2001, that he could not find anything else wrong with Jones. In a report dated June 24, 2002, Dr. Peeples released Jones to full-duty work without any limitations or restrictions and gave him a zero-percent permanent partial impairment rating.

Dr. Peeples referred Jones to Dr. Lon Burba, a neurologist, who recommended nerve-conduction studies. Dr. Burba diagnosed Jones with meralgia paresthetica, and took

him off work. On October 22, 2001, Jones underwent a second MRI, which indicated that he had a mildly diffused annular-disc bulge at L5-S1 and a small superimposed central-disc protrusion, as well as additional disc bulging at L2 and L3. When Dr. Burba recommended additional treatment, the insurance company refused. Jones testified that he was unable to pay for the follow-up treatment himself. He stated that, based upon the EMG, MRIs, and the nerve-conduction studies, it was Dr. Burba's opinion that his condition was related to the workers' compensation injury.

Jones stated that he continued to be in pain on a daily basis. He said that he then saw his primary-care physician, who gave him pain pills and muscle relaxers. On November 15, 2006, Jones was granted a change of physician to Dr. Wayne Bruffet. Jones stated that Dr. Bruffet was not in agreement with Dr. Peebles regarding the significance of the disc protrusion. Jones testified that he had shrunk an inch and gained weight since the injury; he estimated that he was now about 100 pounds overweight.

The first MRI, taken on March 22, 2001, prior to the April 13, 2001 compensable injury, indicated that Jones had degenerative disc disease at L1-2 and L4-5, with disc bulges seen at L1-2 And L4-5. The second MRI, taken on October 22, 2001, showed degenerative disc disease at L5-S1 with a mild diffuse annular-disc bulge and small superimposed central-disc protrusion on the right, indenting the ventral epidural fat but not appearing to impinge upon the thecal sac or exiting S1 nerve roots, along with mild desiccation and minimal diffuse annular disc bulging at L2-3. A third MRI, taken on March 30, 2007, revealed multilevel mild disc bulges at L2-3 through L5-S1 levels

without canal stenosis; disc desiccation at the L2-3 and L5-S1 levels with multilevel anterior spurring; a posterior annular tear at L5-S1; and multilevel degenerative facet disease.

In reversing the ALJ's award of benefits, the Commission stated:

The medical evidence demonstrates that the claimant's original injury was well over six years ago on April 13, 2001. At that time, the claimant underwent extensive testing and was released with no impairment or restrictions in June of 2002. The claimant underwent an MRI on October 22, 2001, which noted that the claimant had degenerative changes and showed no evidence of any nerve root compression. Dr. Peeples released the claimant to return to full duty with no permanent anatomical impairment on June 24, 2002. The claimant continued to complain of pain so an MRI of his pelvis was performed on September 2, 2002, revealing a probable benign lesion in the left femur but was otherwise normal.

It is curious that the claimant went from 2002 with no appreciable medical treatment, until the change of physician request was made in October of 2004. A period of almost four years elapsed. Dr. Bruffet ordered another MRI which showed the claimant had an annular tear at L5-S1. However, that annular tear was not present in the MRIs that were taken previously in March of 2001 and October of 2001. It is conjecture and speculation to conclude that the annular tear seen on the MRI from March of 2007 was in any way connected to or caused by the minor injury that the claimant sustained in April of 2001. Conjecture and speculation, even if plausible, cannot take the place of proof.

In this case, the Commission determined that there was no evidence connecting the annular tear seen in the March 30, 2007 MRI to Jones's minor injury on April 13, 2001, especially given the fact that an MRI taken soon after the compensable injury only indicated a disc bulge, not an annular tear, at L5-S1. The Commission also points out the extended lapse in time before the annular tear was noted in an MRI. Given our standard of review, we hold that there is substantial evidence to support the Commission's denial of benefits.

Affirmed.

HENRY and BROWN, JJ., agree.